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NO. 80-5674

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ORIGINAL COPY

PAUL ROLAND HAMILTON,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Whether the Supreme Court of Georgia without conducting a new sentencing proceeding by a jury, properly reaffirmed Petitioner's death sentence.

2.

Whether the Supreme Court of Georgia properly applied the rules of that Court in making its reconsideration without additional briefs or oral argument.

3.

Whether the Supreme Court of Georgia properly determined under the decision of this Court in Godfrey v. Georgia that the evidence was sufficient to support a finding of a death sentence under Ga. Code Ann. § 27-2534.1(b)(7).

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PART ONE

STATEMENT OF THE CASE

Petitioner, Paul Roland Hamilton, was indicted in Chatham County, Georgia, during the June Term of 1977 for the murder of John A. Shinall. (R. 3, 4). Petitioner was found guilty pursuant to a jury trial and on August 4, 1978, was sentenced to the death penalty.

The jury found that the death penalty should be imposed based on the existence of two statutory aggravating circumstances. The jury found "the offense of murder was committed while the offender was engaged in the commission of another capital felony," and "the offense of murder was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity

of mind, or an aggravated battery to the victim." (R. 8). Ga. Code Ann. § 27-2534.1(b)(2) and (7).

On direct appeal to the Supreme Court of Georgia, the Petitioner asserted the following allegations: (1) The verdict was contrary to law; (2) The verdict was contrary to the evidence; (3) The verdict was against the weight of the evidence; (4) The Court erred in overruling the motion for new trial; (5) The Court erred in excusing jurors based on their opposition to capital punishment; (6) The Court erred in charging the jury on felony murder; and (7) The Court erred in filing the report of the trial judge with the Supreme Court of Georgia. After consideration of these issues and after a sentence review process, the Supreme Court of Georgia affirmed the Petitioner's conviction and sentence on September 6, 1979. Hamilton v. State, 244 Ga. 145, 259 S.E.2d 81 (1979).

Subsequently, represented by different counsel, the Petitioner filed a petition for a writ of certiorari in this Court on January 7, 1980. Between the time of that filing and the decision in this case, this Court handed down the decision in Godfrey v. Georgia, 446 U.S. __, 100 S.Ct. 1759 (1980). Pursuant to the decision in Godfrey, this Court remanded six cases to the Supreme Court of Georgia.[1] The Court entered the following Order in the instant case:

> "The motion of petitioner for leave to proceed in forma pauperis in the petition for writ certiorari is granted. The judgment is vacated insofar as it leaves

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1/ Baker v. Georgia, __ U.S. __, 64 L.Ed.2d 820 (1980); Brooks v. Georgia, __ U.S. __, 64 L.Ed.2d 821 (1980); Collins v. Georgia, __ U.S. __, 64 L.Ed.2d 820 (1980); Davis v. Georgia, __ U.S. __, 64 L.Ed.2d 819 (1980); Hamilton v. Georgia, __ U.S. __, 64 L.Ed.2d 821 (1980); Spraggins v. Georgia, __ U.S. __, 64 L.Ed.2d 820 (1980).

undisturbed the death penalty imposed and the case is remanded to the Supreme Court of Georgia for further consideration in light of Godfrey v. Georgia, 446 U.S. __ (1980)."

Hamilton v. Georgia, __ U.S. __, 64 L.Ed.2d 821 (1980).

The Supreme Court of Georgia reconsidered the death penalty, as instructed by this Court in light of Godfrey v. Georgia, supra, on remand. The Court determined that there were material differences between the case in Godfrey and the instant case and upheld the imposition of the death penalty under the seventh aggravating circumstance. Hamilton v. State, 246 Ga. 264, __ S.E.2d __ (1980). Petitioner now seeks to have this Court review that decision by the Supreme Court of Georgia.

Further facts will be developed as necessary for a more thorough consideration of the issues raised by the present petition.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

A. THE SUPREME COURT OF GEORGIA WAS AUTHORIZED TO REAFFIRM PETITIONER'S DEATH SENTENCE ON REMAND WITHOUT CONDUCTING A NEW SENTENCING PROCEEDING BY A JURY.

Petitioner asserts before this Court that the Supreme Court of Georgia acted outside of its scope of authority in reaffirming Petitioner's death sentence on remand. Specifically, Petitioner implies that the Court should have ordered a new jury sentencing proceeding to be conducted in Petitioner's case. Petitioner further asserts that the jury could have applied an unconstitutional reasoning to the Georgia death penalty statute and that, thus, a new jury sentencing proceeding was required.

Throughout his argument on this point, Petitioner states that the Supreme Court of Georgia acted as a "de novo" sentencing authority in reaffirming Petitioner's death sentence. Respondent asserts that this view of the decisions leading up to the petition before this Court is clearly without any support. On initial review of Petitioner's death sentence, the Georgia Supreme Court considered the death penalty as it is required to do under Georgia law. Ga. Code Ann. § 27-2537. Under this provision, the Court is authorized, indeed directed, to conduct an appellate review of the sentence imposed by the trial court. The initial decision by the Court affirmed the death sentence without going into much detail. The Court

merely found that the evidence supported the jury's finding of both aggravating circumstances.

When this Court ordered a remand, there was no order vacating the original death sentence. The Court vacated the judgment of the Georgia Supreme Court concerning the sentence review. Thus, on remand, the Supreme Court was merely reconducting its appellate review of the death penalty under Ga. Code Ann. § 27-2537. The Court did not reimpose the death sentence but merely reaffirmed the death sentence already imposed by the Chatham County jury.

Respondent asserts that the Supreme Court of Georgia at no time acted as a sentencing authority, but merely properly conducted its appellate review of Petitioner's death sentence on remand from this Court. In conducting that appellate review, the Court looks to see if there is sufficient evidence to support the finding of the aggravating circumstances. This is not speculation that the jury acted in a constitutional manner, as asserted by the Petitioner, but a finding that there was sufficient evidence to support the finding of the seventh aggravating circumstance as limited by this Court's decision in Godfrey v. Georgia. Thus, this allegation presents no federal constitutional question for review by this Court.

B. THE SUPREME COURT OF GEORGIA PROPERLY APPLIED ITS OWN RULES IN RECONSIDERING THE DEATH SENTENCE WITHOUT RECEIVING ADDITIONAL BRIEFS OR ORAL ARGUMENT FROM EITHER PARTY.

Petitioner requested that the Court allow him to present briefs and oral argument on remand. The Supreme Court of

Georgia denied this request and reconsidered Petitioner's sentence based on the record as it existed.

Respondent asserts that there was no requirement for the Court to allow Petitioner to file briefs or conduct oral argument. These are exclusively matters within the consideration of t e Supreme Court of Georgia and the rules governing that Court. Petitioner attempts to liken the consideration on remand to a sentencing procedure, but as previously pointed out by Respondent, no resentencing was conducted. The Court merely conducted a portion of its appellate review in more detail. Had the Court actually conducted a sentencing proceeding, Petitioner's argument might carry more weight. As the Court did not conduct any sentence proceeding itself, but merely reconsidered its own judgment, there was no requirement that the Court allow briefs or oral argument to be conducted.

Respondent also asserts that Petitioner was not denied assistance of counsel in the reconsideration. The Court merely conducted the appellate review as charged by the statute using Godfrey v. Georgia as a guideline. Had this Court intended for an entire sentencing proceeding to be conducted, surely the death penalty itself would have been vacated and the proceeding would have been sent back to the trial court. As it is, the only vacation was addressed to the judgment of the Supreme Court of Georgia and the remand was to that Court for a reconsideration under its appellate review procedure. Thus, Respondent asserts that the Supreme Court properly conducted the appellate review without considering additional briefs or argument. Therefore, there is no federal constitutional violation shown.

C. THE SUPREME COURT OF GEORGIA PROPERLY REAFFIRMED PETITIONER'S DEATH SENTENCE UNDER GA. CODE ANN. § 27-2534.1(b)(7) IN LIGHT OF GODFREY V. GEORGIA.

Petitioner asserts that this Court should grant certiorari to consider whether the Supreme Court of Georgia construed or applied Ga. Code Ann. § 27-2534.1(b)(7) in an unconstitutional manner. Petitioner attempts to discredit the opinion of the Supreme Court of Georgia on remand by asserting that the Court merely found factual differences in this case and in Godfrey. Respondent asserts that one of the main ways to avoid arbitrary and capricious infliction of the death penalty is to consider each case on the facts and to limit the death penalty to situations in which the facts actually justify it.

Petitioner asserts that the Supreme Court of Georgia is attempting to use the seventh aggravating circumstance as a catch-all for murder cases. Petitioner specifically refers to a "rash of affirmances" since the decision of Godfrey, and states that a number of them are "highly questionable". (Brief of Petitioner at 19). Petitioner has cited only four cases to support his assertion of a "rash of affirmances" and has not made any showing that any of those affirmances were made on "highly questionable" grounds. In reality, since the decision in Godfrey, the Supreme Court of Georgia has taken great pains to make its appellate review an elaborate and detailed process by examining each case and the facts of each case thoroughly. This Court should note in particular that the Supreme Court of Georgia recently in Hance v. State, 245 Ga. 856, 268 S.E.2d 339 (1980), went into great detail in defining and

explaining the seventh aggravating circumstance. The Court consolidated its earlier opinions and this Court's decision in Godfrey to set out a specific meaning of the seventh aggravating circumstance for the purposes of appellate review.

In considering Petitioner's death sentence on remand in light of Godfrey, this Court found that the murder in the instant case was clearly distinguishable from those murders for which the death penalty is not appropriate. The Court noted that the Petitioner took advantage of the victim's hospitality specifically in order to rob and kill him. Thereafter, the Defendant fled and attempted in all possible ways to conceal the crime. Furthermore, as noted by the Supreme Court of Georgia, the evidence shows that the victim was killed as a part of a robbery scheme. The victim had been beaten with a soft drink bottle and a vase prior to his death and that the bottle and vase broke due to the severe impact with the victim's skull. The victim was also cut and stabbed four times, including one wound which almost severed a part of his ear. None of these wounds actually caused death, but death was caused as a result of one of two stab wounds to the chest. Therefore, as enunciated by this Court in Godfrey, and as found by the Supreme Court of Georgia, there was clearly serious physical abuse occurring prior to death to support a finding of the seventh aggravating circumstance. This clearly takes this case out of the realm of the cases similar to those considered by this Court in its review in Godfrey. This Court was concerned about those crimes that "cannot be said to have reflected a consciousness materially more 'depraved' than that of any person guilty of murder." Godfrey, supra at 1767. The Supreme Court of Georgia clearly found that

this case was distinguishable from the "ordinary murders" and properly limited the application of the seventh aggravating circumstance in its appellate review. Thus, the Supreme Court of Georgia properly reaffirmed Petitioner's death sentence.

CONCLUSION

For the above and foregoing reasons, Respondent respectfully requests that this Court deny the petition for a writ of certiorari filed on behalf of the Petitioner, Paul Roland Hamilton.

Respectfully submitted,

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